IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 759 OF 2005
IN
NOTICE OF MOTION NO. 136 OF 2004
IN
TESTAMENTARY PETITION NO. 1242 OF 1999.

Aleya Chinmulgund and another. ... Appellants.
Versus.
Ajay Piramal and others. ... Respondents.

Appellant in person.

Mr.N.Engineer i/by M/s.Desai & Diwanji for Respondents Nos.1 to 3.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 28th FEBRUARY, 2006.

P.C.:

1. Heard the Appellant appearing in person. Mr.Engineer appears for Respondents Nos.1 to 3. This appeal seeks to challenge the orders passed by the learned Single Judge firstly on 22nd July 2005 and later on 5thAugust 2005 on Notice of Motion No.136 of 2004 which the Appellant had taken out in Petition No.1242 of 1999. The first order was passed after hearing the Counsel for the Appellant but since the Appellant did not want her Counsel to continue, the learned Judge heard the Appellant in person and then passed the second order.

2. The Motion is taken out for three prayers principally. Prayer (a) was for a direction to

Respondents Nos.1 to 3 to file a statement of account regarding administration of estate of the deceased father of the Appellant. Prayer (b) was with respect to handing over various articles and valuables lying in flat No.13 in Rajat Apartment, Mumbai-6. Prayer (c) was regarding certain maintenance amount which she sought from Respondent No.4, her estranged husband. Now as far as prayer (c) is concerned, the learned Judge has observed, and in our view rightly so, that this prayer was outside the testamentary jurisdiction of the learned Judge and therefore, he was right in rejecting the same. As far as the two other prayers were concerned, prayer (a) was with respect to the accounts. The Appellant has drawn our attention to section 317 of the Indian Succession Act and has submitted that within one year from the grant or within such further time the Court may appoint, the account of the estate are to be given by the Executors. She has pointed out that the order of probate was passed on 10th January 2001 and therefore, the insistence on the account being given. As far as this aspect is concerned, Mr.Engineer, the learned appearing for Respondent Nos.1 to 3, has drawn our attention to the schedule to the petition and has pointed out that the entire value of the estate was around Rs.3,98,89,717/-. Out of this, the principal portion was the estimated valuation of the flat which was in the range of Rs.2.50 crores. As far as the remaining amount is concerned, it has been stated on

affidavit of Respondent No.1 in reply to the Motion that more than 90% of the remaining moveable properties have been dealt with. The Appellant has 1/5th share in the estate of the deceased and from out of the amount of Rs.1.05 crores, a sum of Rs.21 lakhs have been disbursed to the Appellant. The Appellant makes a grievance that though the amounts were to be released in March 2001, they were ultimately paid in January 2002. The fact, however, remains that except for the sale of the flat, most of the properties have been administered and an explanation has been given. In the circumstances, there is no need for an order which is sought in terms of prayer clause (a) of the Motion as of now. This is apart from the submission of Mr.Engineer, which we note, that this is not a stage where the account should be insisted upon.

3. Prayer (b) of the Motion is with respect to the inventory of the articles lying in the flat at Rajat Apartment. The order passed by the learned Single Judge permitted her to visit the place and collect her articles. She has made a grievance that she was not allowed to enter the flat and the Commissioner restrained her. Mr.Engineer has drawn our attention to the report of the Commissioner. The report has an exhibit containing the personal articles of the Appellant lying in the particular flat. For the reasons best known to the Appellant, she has not collected the

same. She is at liberty to collect those articles as and when she likes to do so after giving notice to the very Commissioner, who will be accompanied by one of the Executors or their representative. We do not find any infirmity in the order passed by the learned Single Judge. The Appeal is, therefore, dismissed.

4. The Appellant applies for stay of this order. There is nothing prejudicial to the Appellant that we have done in this order. Hence there is no question of any stay.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)